

FILED

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United States District Court
Eastern District of North Carolina
Western Division

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
DEP CLK

Case No. 5:20-CT-3055

(To be filled out by Clerk's Office only)

Derwin McFadden

Inmate Number 0494228

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

COMPLAINT

(Pro Se Prisoner)

Sergeant James at Pender C.I. #4150

Jury Demand?

☒ Yes

Sergeant William A. Brandon at Pender C.I. #4150

☐ No

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section IV. Do not include addresses here.)

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

I. COMPLAINT

Indicate below the federal legal basis for your claim, if known. This form is designed primarily for pro se prisoners challenging the constitutionality of their conditions of confinement, claims which are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

- ☒ 42 U.S.C. § 1983 (state, county, or municipal defendants)
- ☐ Action under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) (federal defendants)
- ☐ Action under Federal Tort Claims Act (United States is the proper defendant; must have presented claim in writing to the appropriate Federal agency and received a notice of final denial of the claim pursuant to 28 U.S.C. § 2401(b))

II. PLAINTIFF INFORMATION

Derwin McFadden
Name

0494288
Prisoner ID #

MAURY Correctional Institution
Place of Detention

P.O. Box 506
Institutional Address

MAURY
City

N.C.
State

28554
Zip Code

III. PRISONER STATUS

Indicate whether you are a prisoner or other confined person as follows:

- ☐ Pretrial detainee ☒ State ☐ Federal
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner

IV. DEFENDANT(S) INFORMATION

Please list the following information for each defendant. If the correct information is not provided, it could result in the delay or prevention of service. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant 1: Mr. James
Name
Sergeant
Current Job Title
Pender C.I. #4150, P.O. Box 1058
Current Work Address
Burgaw N.C. 28425
City State Zip Code
Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant 2: Mr. William A. Brandon
Name
Sergeant
Current Job Title
Sergeant at Pender C.I. #4150, P.O. Box 1058
Current Work Address
Burgaw N.C. 28425
City State Zip Code
Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant(s) Continued

Defendant 3:

Name

Current Job Title

Current Work Address

City

State

Zip Code

Capacity in which being sued: ☐ Individual ☐ Official ☐ Both

Defendant 4:

Name

Current Job Title

Current Work Address

City

State

Zip Code

Capacity in which being sued: ☐ Individual ☐ Official ☐ Both

V. STATEMENT OF CLAIM

Place(s) of occurrence: Pender C.I. #4150

Date(s) of occurrence: 06-01-2019

State which of your federal constitutional or federal statutory rights have been violated:

Eight Amendment - Carelessness, and recklessness by the Official. Fail to recognize Plaintiff as level-(2) Mental Health, under the (ADA)-AMERICAN DISABILITY ACT

State here briefly the FACTS that support your case. Describe how each defendant was personally involved in the alleged wrongful actions, state whether you were physically injured as a result of those actions, and if so, state your injury and what medical attention was provided to you.

FACTS:

Who
did what to
you?

Sergeant James and Sergeant Brandon release plaintiff from the holden cell under the influence of K-2 (spice), after being notified by Officer C. Gray about what took place and the Confession to using K-2 (spice) by the Plaintiff to both Sergeant. Both Sergeant did not follow Policy of North Carolina Division of Prison For the Plaintiff is level-(2) Mental Health this Policy insure the Safety of the inmate by placing them in restrictive housing for administrative purposes until they can be seen by Mental Health Staff. This Allow the Plaintiff to be Screen by Medical Due to Policy and Procedure At Pender C.I.

under the (IS11) automated record screen Process before being place in restrictive housing for administrative Purposes (seq) To insure the Plaintiff Safety.

What
happened
to you?

The Following incident took place at Pender C.I. #4150 that led to the injuries of the plaintiff after being release Under the influence of K-2 (Spice). According to Officer D'souza 138-B Statement (B14) writeup... That the plaintiff ask officer D'Souza for help by ask for Mental Health or a Sergeant because he did not feel like himself before Striking a glass window under the influence of k-2 (Spice) That Cause immediate life threaten danger For exposure to both wrist and arm where Cut. That the Plaintiff had to be taken to NEW HANOVER Memorial Regional Hospital for a life Saving Procedures

When did it
happen to
you?

The 1st day of June 2019, that Code Blue from Medical was call for Dorm-(C) on the North yard at 3:30 Pm.

Where did it
happen to
you?

It ~~at~~ happen at Pender C.I. #4150 after Being release from the holden cell Under the Influence of K-2 (Spice), to the North Yard where the Plaintiff was assign to Dorm-(C).

What was
your
injury?

My injuries consist of both arm and wrist being
expose from the cut. That for the operation
it took a vein from left ankle to be place
in my left wrist to save my left hand. That the
Plaintiff suffer mental and physical injuries from
this mishap. That the plaintiff have to endure
going through life with the disability factor.
That the Plaintiff Do not have the full-range
of motion in his left hand.

VI. ADMINISTRATIVE PROCEDURES

WARNING: Prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions. 42 U.S.C. § 1997e(a). Your case may be dismissed if you have not exhausted your administrative remedies.

Have you filed a grievance concerning the facts relating to this complaint? ☒ Yes ☐ No

If no, explain why not:

The Copy for this remedy exhaust
will be with the original and Court
Copy only...

Is the grievance process completed? ☒ Yes ☐ No

If no, explain why not:

The Copy for this remedy exhaust
will be with the original and Court
Copy only...

VII. RELIEF

State briefly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

I want to be Compensate for my mental and physical
injuries. For the damage amount is more than
\$25,000 in damages. That I want to be well Compensate
For I am unable to work a hands on job for where
I am most skilled at. That I need this financial support
upon my release from prison, because of this disability.
That I ask for this relief in this fashion.

VIII. PRISONER'S LITIGATION HISTORY

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in forma pauperis in federal court if that prisoner has "on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. §1915(g).

Have you brought any other lawsuits in state or federal court while a prisoner?

☒ Yes ☐ No

If yes, how many? (4)

Number each different lawsuit below and include the following:

- Name of case (including defendants' names), court, and docket number
- Nature of claim made
- How did it end? (For example, if it was dismissed, appealed, or is still pending, explain below.)

#1 - North Carolina Industrial Commission

(NAME) - Lieutenant Hackney (NCIC - I.C. File # TA-27913)

(prea - dismiss)

#2 North Carolina Industrial Commission

(NAME) - Sgt. Sanderson, % NEU, % Cooley, and % Jones

(NCIC - I.C. File # TA-27575)

(Excessive Force - Active appeal)

#3 North Carolina Industrial Commission

(NAME) - Sgt. James and Sgt. Brandon

(NCIC - I.C. File # TA-27910 - TA-27965 (Consolidated))

(Tort Claim Negligence - Active)

#4 Federal Civil Rights Claims Under 42 U.S.C. § 1983

(NAME) - Sgt. Sanderson, % NEU, % Cooley, and % Jones

(No. 5:19-CT-3346-FL)

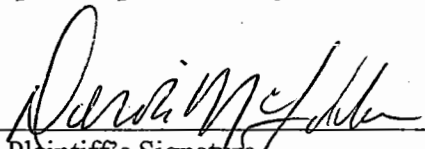
IX. PLAINTIFF'S DECLARATION AND WARNING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint and provide prison identification number and prison address.

01-28-2020
Dated


Plaintiff's Signature

Derwin McFadden
Printed Name

0494228
Prison Identification #

P.O. Box 506 MAURY N.C. 28554
Prison Address City State Zip Code